IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 426 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

N.M PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 426 of 1991

MS PAURAMI SHETH for MR BR SHAH for Petitioner No. 1

MR MA BUKHARI A.P.P. for Respondent No. 1

MS SADHANA SAGAR for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/07/2001

ORAL JUDGEMENT

1. The Food Inspector, Bharuch Nagar Palika, challenges the judgment and order of learned Chief

Judicial Magistrate, Bharuch, rendered on December 13, 1989 in Criminal Case No.3277/86 acquitting respondent No.2 of the charges punishable under Section 7 read with Section 16 of the Prevention of Food Adulteration Act.

2. The facts of the case in brief are as under :-

2.1 The Food Inspector Mr.N.M. Patel visited the shop of respondent No.2 in Hazikhana Bazar of Bharuch, on March 7, 1986 at about 11:30 a.m. with peon Jagjivanbhai Girdharbhai. He summoned panch Rameshchandra Vaikunthlal and thereafter purchased groundnut oil as well as shingoda flour, after following required procedure. The samples were divided into three parts and were packed, wrapped and sealed. The samples were sent to Public Analyst for analysis and it was found that the sample of the groundnut oil did not conform to the prescribed standards. Requisite consent as required under Section 20 of the Food Adulteration Act, was obtained from the Local Health Authority and compliant was lodged in the Court of learned Chief Judicial Magistrate, Bharuch. The accused pleaded not guilty and therefore trial was proceeded with. After considering the evidence on record, the learned Chief Judicial Magistrate, Bharuch came to a conclusion that the prosecution had failed to establish charges against the accused and therefore recorded the order of acquittal. Being aggrieved by the said judgment and order the present appeal is preferred.

3. Ms.Paurami Sheth appearing for Mr.B.R. Shah for the appellant has taken this Court through the records and proceedings as well as judgment and order impugned herein. She submitted that the impugned judgment and order is passed mainly on four findings. The first finding is that because there is non mentioning about the timings and commencement in the panchnama, the panchnama is held to be doubtful by the Trial Court. She submitted that consent under Section 20 given by Local Health Authority are also held to be defective. The third factor that has weighed with the Trial Court is that the signature on the acknowledgment slip of the accused is in English whereas in rest of the documents he has singed in Gujarati and therefore the Trial Court held that notice has not reached the accused and therefore it is noncompliance of mandatary requirements. Lastly, Ms.Sheth submitted that the Trial Court was impressed by the contention and the findings that the bottles were not properly cleaned and therefore the report of the Public Analyst cannot be said to have been properly followed the procedure which has resulted into procedural irregularity and therefore the acquittal is recorded.

4. Ms.Sheth submitted that non mentioning of name is procedural irregularity. There is no form prescribed and as such, when the witness support the drawing of panchnama merely because there is no mentioning of time of commencement under the panchnama, cannot be doubted. As regards sanction, it is contended that the same is defective on account of non mentioning of reasons. She submitted that if the Local Health Authority perused the papers and has applied mind, mere nonmentioning of reasons will not vitiate the sanction. She has placed reliance on the decision of the Apex Court in the case of Suresh Rajput and others v. Bhartiben Pravinbhai Soni and others, reported in 1996 (7) S.C.C. 199. She also placed reliance on the decision in the case of Gangadhar Yashvant Ramekar v. Mukeshbhai B. Shah and others reported in 1999 (2) G.L.R. 1105.

5. It is contended further that the Court was impressed by the fact that the signature of the accused on acknowledgment slip was in English whereas she has signed at all other places in Gujarati and therefore the prosecution could not prove that the required procedure is followed as required under the Act, intimating the accused about the receipt of the Public Analyst report and the option of sending the sample to Central Food Laboratory. She submitted that notice was sent through postal department and in absence of any evidence to the contrary, a presumption may be drawn that the postal authority has delivered the letter to the address in accordance with Rule and the accused having not deprived, the fact of receipt of the notice the Trial Court ought not to have held that the mandatory requirement has not been followed. As regards the bottles in which sample was taken, the Trial Court has held that there is no evidence to indicate that the bottles were not cleaned and sterilized and therefore it is a matter of doubt whether the Public Analyst report reflects the correct quality of the sample. Ms.Sheth submitted assuming for a moment, that the bottles were not dried and therefore assuming that the reasons would be only in respect of presence of Food Adulteration, or at the most one or two ingredients would be not conforming to standards whereas if the report of the Public Analyst which is received is seen mainly eight ingredients are found to be not conforming to the prescribed standard. She therefore urged that considering the errors committed by the Trial Court in assuming evidence, the appeal may be allowed.

6. Ms.Sadhna Sagar appeared for respondent No.2 and Mr.M.A. Bukhari, learned A.P.P. has appeared for

respondent No.4 and opposed this appeal.

7. If the contentions raised by the learned advocate for the appellant, regarding the sampling procedure in the bottles are considered first, it has to be noted that there is no substance in the argument. Ms.Sheth submitted that when the samples were taken, the bottles were cleaned and dried. This aspect has clearly been stated by the complainant in his deposition. In cross-examination-in-chief, he categorically states that the groundnut oil purchased for analysis was divided into three parts and placed into three clean and dried bottles free from odour. She therefore submitted that this is sufficient evidence to indicate that the bottles were dried, clean and free from odour. However, if we consider the evidence of the complainant as a whole, during the cross-examination, he states that the bottles can be closed with cork and there was no writing either on the cork or on the bottles. He further has to admit that he cannot say as to when the bottles were purchased from Baroda. He also admits that he had himself not gone for purchase of the bottles. He admits that bottles and corks are purchased separately. His office does not maintain any register or stock register for the bottles. He has no evidence to indicate that the bottles in which samples were taken were obtained by him from the office. He also admits that he does not know whether from the trader from whom the bottles were purchased, purchased new or second hand bottles. According to him the purchased bottles are kept in a cupboard duly corked. He admits that the bottles were not sterilized or vaccumized before employing to use. He also admits that it was not certain whether the corks were free from humidity. He admitted that the bottles are used in the same conditions as purchased from Baroda.

7.1. It is very clear from the above admissions of the complainant that he does not know from whom the bottles are purchased. He cannot say whether the vendor, before selling the bottles, cleaned the bottles or not. He cannot say whether the vendor from whom his office purchased the bottles supplies new bottles only or second hand bottles as well. Nowhere it is stated that the bottles were cleaned by the vendor before supplying it to the office of the complainant. It is not his case that after the purchase, the bottles are cleaned by his office. Thus there is absolutely no evidence to indicate that the bottles were cleaned or that the bottles were brand new. Even if there is evidence to show that the bottles are corked, they are separately purchased and therefore the possibility of the bottles getting dirty

(since they are not corked) before being corked and employed to use cannot be ruled out. The requirement of Rule 14 therefore cannot be said to have been complied with. Resultantly, the procedure of taking samples itself would be vitiated and therefore, even if requirements are fulfilled, conviction cannot be recorded. In this regard decision in case of Gangadhar Yashvant Ramekar v. Mukeshbhai B. Shah and Ors. reported in 1999 (2) G.L.R. 1105, Sudhirchandra B. Joshi v. Arvindkumar Naranbhai Patel and Ors. rendered in Criminal Appeal No.1013 of 1988 dated July 12, 1995 and M.B. Risaldar v. Radheshyam reported in 1980 (2) G.L.R. 136 would be applicable to the facts of the present case. In view of this finding the learned advocate for the appellant does not invite any findings on the other points considered by the Trial Court sufficient for not recording conviction.

8. This is an appeal against the acquittal, where the scope for interference in the verdict of the Trial Court is limited and unless any manifest error or perversity is indicated, this Court will not interfere in the order of acquittal. No such manifest error or perversity is indicated, the order cannot be said to be palpably unsustainable nor can it be said that the view adopted by the Trial Magistrate is impossible one. The appeal therefore, must fail and the same is therefore dismissed.

(A.L. DAVE, J.)

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